

1 DAVID E. McALLISTER (AZ SBN 021551)
JOSEPHINE E. PIRANIO (AZ SBN 020630)
2 BRIAN PAINO (AZ SBN 027091)
PITE DUNCAN, LLP
3 4375 Jutland Drive, Suite 200
P.O. Box 17933
4 San Diego, CA 92177-0933
Telephone: (858) 750-7600
5 Facsimile: (619) 590-1385
kshelton@piteduncan.com
6

7 Attorneys for WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS
FARGO BANK SOUTHWEST, N.A. FORMERLY KNOWN AS WACHVOIA MORTGAGE,
FSB, FORMERLY KNOWN AS WORLD SAVINGS BANK, FSB
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10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF ARIZONA - PHOENIX DIVISION
12

13 In re

14 JAMES S CARD ,

15 Debtor(s).

Case No. 2:09-bk-22479-CGC

Chapter 13

MOTION FOR RELIEF FROM
AUTOMATIC STAY

(11 U.S.C. § 362 and Bankruptcy Rule 4001)

16 WELLS FARGO BANK, N.A., SUCCESSOR
17 BY MERGER TO WELLS FARGO BANK
SOUTHWEST, N.A. FORMERLY KNOWN
18 AS WACHVOIA MORTGAGE, FSB,
FORMERLY KNOWN AS WORLD
19 SAVINGS BANK, FSB,

20 Movant,

21 vs.

22 JAMES S CARD , Debtor(s); and EDWARD
J. MANEY , Chapter 13 Trustee,

23 Respondents.
24

25 TO THE RESPONDENTS NAMED ABOVE:

26 Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Southwest, N.A.
27 formerly known as Wachvoia Mortgage, FSB, formerly known as World Savings Bank, FSB
28 ("Movant"), respectfully represents as follows:

1 **RELIEF FROM STAY - CAUSE**

2 **FAILURE TO MAKE POST-PETITION PAYMENTS**

3 1. This court has jurisdiction over the subject matter of this Motion pursuant to the
4 provisions of 28 United States Code §§ 157, 1334, and 11 United States Code § 362.

5 2. On or about September 11, 2009, James S Card ("Debtor") filed a voluntary
6 petition under Chapter 7 of the Bankruptcy Code. On or about October 20, 2009 said case was
7 converted to one under Chapter 13 of the bankruptcy code and Edward J. Maney is the appointed
8 Chapter 13 Trustee.

9 3. On or about September 4, 2007, Debtor, for valuable consideration, made,
10 executed and delivered to Movant a Note in the principal sum of \$456,000.00(the "Note").
11 Pursuant to the Note, Debtor is obligated to make monthly principal and interest payments
12 commencing October 15, 2007, and continuing until September 15, 2037, when all outstanding
13 amounts are due and payable. A true and correct copy of the Note is attached hereto as exhibit A
14 and incorporated herein by reference.

15 4. Movant currently owns the Note and is entitled to enforce the provisions on the
16 Note and Deed of Trust.

17 5. On or about September 4, 2007, Debtor made, executed and delivered to Movant
18 a Deed of Trust (the "Deed of Trust") granting Movant a security interest in the certain real
19 property located at 2343 E Riverdale Cir, Mesa, Arizona 85213-9749 (hereinafter "Real
20 Property"), which is more fully described in the Deed of Trust. The Deed of Trust provides that
21 attorneys' fees and costs incurred as a result of the Debtor's bankruptcy case may be included in
22 the outstanding balance under the Note. The Deed of Trust was recorded on September 7, 2007,
23 in the Official Records of Maricopa County, State of Arizona. A true and correct copy of the
24 Deed of Trust is attached hereto as exhibit B and incorporated herein by reference.

25 6. The Debtor is in default of his obligations under the Note for failure to make
26 payments as of September 15, 2009. As of March 13, 2010, the total amount owing under the
27 Note is the approximate sum of \$389,464.93, representing the principal balance of \$376,687.02,
28 interest in the sum of \$11,350.95, late charges in the amount of \$576.80, escrow advances in the

1 amount of \$561.63, a recoverable balance in the amount of \$290.00, less a suspense balance in
2 the amount of \$<1.47>. Further, Movant has incurred additional post-petition attorneys' fees and
3 costs in bringing the instant Motion. This is an approximate amount for purposes of this Motion
4 only, and should not be relied upon as such to pay off the subject loan as interest and additional
5 advances may come due subsequent to the filing of the Motion. An exact payoff amount can be
6 obtained by contacting Movant's counsel.

7 7. Pursuant to 11 United States Code § 1322, and the Debtor's Chapter 13 Plan, the
8 Debtor is obligated to make all post-petition payments owing on the Note directly to Movant.
9 However, Movant has not received the post-petition payments owing for December 15, 2009
10 through March 15, 2010. Accordingly, the post-petition arrears owing under the Note are in the
11 approximate sum of \$7,855.12, consisting of two (2) payments in the amount of \$1,898.53 each,
12 two (2) payments in the amount of \$1,905.43 each, and post-petition late fees in the amount of
13 \$247.20, excluding the post-petition attorneys' fees and costs incurred in filing the instant
14 Motion.

15 8. A debtor's failure to make post-petition mortgage payments as they become due in
16 a Chapter 13 case constitutes "cause" for relief from the automatic stay pursuant to 11 United
17 States Code § 362(d)(1). In re Ellis, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). Accordingly, as the
18 Debtor has failed to make post-petition payments under the Note, Movant is entitled to relief
19 from the automatic stay pursuant to 11 United States Code § 362(d)(1).

20 **RELIEF FROM STAY**

21 **LACK OF EQUITY**

22 9. Movant is informed and believes that, based on an appraisal, the fair market value
23 of the Property as of August 31, 2007, is approximately \$570,000.00. A true and correct copy of
24 the appraisal is attached hereto as exhibit C and incorporated herein by reference.

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10. Based on the above, under the best case scenario, Movant is informed and believes that the equity in the Real Property is as follows:

Fair Market Value:	\$570,000.00
Less:	
Movant's 1 st Trust Deed	\$389,464.93
Chase Mortgage's 2 nd Trust Deed	101,098.00
Costs of Sale (8%)	<u>45,600.00</u>
Equity in the Property:	\$33,837.07

As a result, there is little to no equity in the Real Property to be realized by the Debtor or the bankruptcy estate. Further, as the Debtor is unable to service the debt on the Real Property, Movant contends that the Real Property is not necessary for an effective reorganization. Therefore, Movant is entitled to relief from stay under 11 United States Code § 362(d)(2).

11. If Movant is not allowed to regain possession of and to foreclose on the Real Property it will suffer irreparable injury, loss and damage.

RELIEF FROM STAY - CAUSE

ADEQUATE PROTECTION

12. Pursuant to the provisions of 11 United States Code §§ 361 and 362(d), Movant is entitled to adequate protection of its interest in the Real Property.

13. Movant submits the adequate protection in this case requires normal and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

14. Movant is informed and believes that Debtor is presently unwilling or unable to provide adequate protection to the Movant and there is no probability that adequate protection can be afforded to Movant within a reasonable time.

15. By reason of the foregoing, Movant is entitled to relief from stay under 11 United States Code § 362(d)(1), based upon the failure of Debtor to provide adequate protection to Movant and to make payments as required by 11 United States Code § 1322.

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1 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

2 1. Terminating the automatic stay of 11 United States Code § 362, as it applies to the
3 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of
4 Trust;

5 2. Granting Movant leave to foreclose on the Real Property and to enforce the
6 security interest under the Note and the Deed of Trust, including any action necessary to obtain
7 possession of the Property;

8 3. Permitting Movant to offer and provide Debtor with information re: a potential
9 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
10 Mitigation Agreement and to enter into such agreement with Debtor;

11 4. Alternatively, in the event this court declines to grant Movant the relief requested
12 above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to
13 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
14 and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay
15 when due (a) the monthly installments of principal and interest, as required under the Note;
16 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order
17 to protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred
18 in the filing of this motion;

19 5. That the attorneys' fees and costs incurred by Movant for filing the instant Motion
20 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
21 law; and

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1 6. For such other and further relief as the court deems just and proper.

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3 Dated: March 25, 2010

PITE DUNCAN, LLP

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5
6 /s/ JES 020630
7 JOSEPHINE E. PIRANIO
8 Attorneys for Movant
9 4375 Jutland Drive, Suite 200
10 P.O. Box 17933
11 San Diego, CA 92177-0933
12 Telephone: (858) 750-7600
13 Facsimile: (619) 590-1385

14 Copies of the foregoing mailed
15 March 25, 2010, to:

16 JAMES S CARD
17 2343 EAST RIVERDALE CIRCLE
18 MESA, AZ 85213
19 (DEBTOR)

20 JOSEPH W. CHARLES
21 LAW OFFICES OF JOSEPH W. CHARLES, P.C.
22 P.O. BOX 1737
23 GLENDALE, AZ 85311-1737
24 (Debtor(s) Attorney)

25 EDWARD J. MANEY
26 P.O. BOX 10434
27 PHOENIX, AZ 85064-0434
28 (TRUSTEE)

29 RONALD L. HOFFBAUER
30 EDWARD J. MANEY, CHAPTER 13 TRUSTEE
31 P.O. BOX 10434
32 PHOENIX, AZ 85064
33 (ATTORNEY TO TRUSTEE)